

SENATE BILL No. 5

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-42; IC 31-12-2-3; IC 31-14-13-2; IC 31-14-13-2.5; IC 31-15-4-9; IC 31-17-2.

Synopsis: Domestic violence considerations in domestic cases. Establishes a rebuttable presumption that a parent who has demonstrated a pattern of domestic violence may not be awarded sole or joint custody of a child. Provides that presumption applies to both dissolution of marriage and paternity cases. Provides that domestic violence includes physical or sexual abuse regardless of whether the abuse resulted in a criminal prosecution. Allows the presumption to be rebutted only: (1) upon evidence that the parent has successfully completed a treatment program and is not abusing alcohol or drugs; and (2) upon a showing that it is in the best interests of the child because of the conduct of the other parent. Allows a court to order only supervised visitation, if any, with a parent who has demonstrated a pattern of domestic violence, conditioned on the parent's participation in a domestic violence treatment program. Provides that unsupervised
(Continued next page)

Effective: July 1, 1999.

Simpson

January 6, 1999, read first time and referred to Committee on Judiciary.



Digest Continued

visitation may be ordered if certain additional conditions are met. Prescribes guidelines for a court to follow in determining custody when both parents have demonstrated a pattern of domestic violence. Prohibits a court from ordering a party in a domestic relations proceeding to participate in counseling or mediation if the court finds that the other party has demonstrated a pattern of domestic violence against the party or a child of the parties.

C
o
p
y



First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 5

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 31-9-2-42 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 42. "Domestic
3 violence", for purposes of IC 31-14-13-2, **IC 31-14-13-2.5**, IC 31-15,
4 IC 31-16, and IC 31-17, includes conduct found by a court to be
5 physical or sexual abuse against a party or child of a party, including
6 conduct that is an element of an offense under IC 35-42, regardless of
7 whether the conduct results in a criminal prosecution or occurs in the
8 presence of a child of the parties. The term does not include:
9 (1) negligence or defamation by one (1) parent against the other
10 parent or the child; or
11 (2) reasonable acts of self defense used to protect a parent or child
12 from the conduct of the other parent.
13 SECTION 2. IC 31-12-2-3 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. **(a) Except as**
15 **provided in subsection (b)**, a judge may order either or both parties in
16 a domestic relations proceeding to:
17 (1) report to the domestic relations bureau;



(2) cooperate in counseling; and

(3) furnish the counselor with pertinent information in a party's knowledge.

(b) The court may not order a party to participate in counseling or mediation if the court finds that the other party has demonstrated a pattern of domestic violence against the party or a child of the parties.

SECTION 3. IC 31-14-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. The court shall determine custody in accordance with the best interests of the child. In determining the child's best interests, there is not a presumption favoring either parent. The court shall consider all relevant factors, including the following:

(1) The age and sex of the child.

(2) The wishes of the child's parents.

(3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.

(4) The interaction and interrelationship of the child with:

(A) the child's parents;

(B) the child's siblings; and

(C) any other person who may significantly affect the child's best interest.

(5) The child's adjustment to home, school, and community.

(6) The mental and physical health of all individuals involved.

(7) Evidence of a pattern of domestic violence by either parent.

However, there is a rebuttable presumption that a parent who has demonstrated a pattern of domestic violence is not entitled to sole or joint custody of a child as described by section 2.5 of this chapter. Evidence that a parent is a victim of domestic violence is not grounds for denying that parent custody of the child.

SECTION 4. IC 31-14-13-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2.5. (a) Except as provided in subsection (b), there is a rebuttable presumption that a parent who has demonstrated a pattern of domestic violence is not entitled to sole or joint custody of a child. The presumption may be rebutted only upon evidence that:

(1) the parent:

(A) has successfully completed a domestic violence treatment program; and

(B) is not abusing alcohol or drugs; and



(2) the best interests of the child require the parent to serve as a custodial parent because of the other parent's absence, mental illness, or substance abuse, or other circumstances that affect the best interests of the child.

(b) If the court finds that both parents have demonstrated a pattern of domestic violence, custody shall be awarded solely to the parent who is less likely to continue the pattern of domestic violence. If this subsection applies, the court shall order the custodial parent to successfully complete a domestic violence treatment program. If necessary to protect the welfare of the child, custody may be temporarily awarded to a suitable third person designated by the court, if the third person will not allow access to a parent who has a pattern of domestic violence except as ordered by the court.

(c) Except as provided in subsection (b), the court may order only supervised child visitation, if any, with a parent who has demonstrated a pattern of domestic violence, conditioned upon the parent's participation in a domestic violence treatment program. However, the court may order unsupervised child visitation with the parent if:

(1) the parent:

(A) has successfully completed a domestic violence treatment program;

(B) is not abusing alcohol or drugs; and

(C) poses no danger to the child; and

(2) the unsupervised visitation is in the child's best interests.

SECTION 5. IC 31-15-4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) **Except as provided in subsection (b)**, the court may require the parties to seek counseling for themselves or for a child of the parties under such terms and conditions that the court considers appropriate if:

(1) either party makes a motion for counseling in an effort to improve conditions of their marriage;

(2) a party, the child of the parties, the child's guardian ad litem or court appointed special advocate, or the court makes a motion for counseling for the child; or

(3) the court makes a motion for counseling for parties who are the parents of a child less than eighteen (18) years of age.

(b) The court may not order a party to participate in counseling if the court finds that the other party has demonstrated a pattern of domestic violence against the party or a child of the parties.

SECTION 6. IC 31-17-2-8 IS AMENDED TO READ AS



FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child's parent or parents;
 - (B) the child's sibling; and
 - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
 - (A) home;
 - (B) school; and
 - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic violence by either parent.

However, there is a rebuttable presumption that a parent who has demonstrated a pattern of domestic violence is not entitled to sole or joint custody of a child as described by section 15.5 of this chapter. Evidence that a parent is a victim of domestic violence is not grounds for denying that parent custody of the child.

SECTION 7. IC 31-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. **Subject to section 15.5 of this chapter**, the court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child.

SECTION 8. IC 31-17-2-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 15.5. (a) Except as provided in subsection (b), there is a rebuttable presumption that a parent who has demonstrated a pattern of domestic violence is not entitled to sole or joint custody of a child. The presumption may be rebutted only upon evidence that:**

- (1) the parent:
 - (A) has successfully completed a domestic violence treatment program; and
 - (B) is not abusing alcohol or drugs; and



1 (2) the best interests of the child require the parent to serve as
2 a custodial parent because of the other parent's absence,
3 mental illness, or substance abuse, or other circumstances
4 that affect the best interests of the child.

5 (b) If the court finds that both parents have demonstrated a
6 pattern of domestic violence, custody shall be awarded solely to the
7 parent who is less likely to continue the pattern of domestic
8 violence. If this subsection applies, the court shall order the
9 custodial parent to successfully complete a domestic violence
10 treatment program. If necessary to protect the welfare of the child,
11 custody may be temporarily awarded to a suitable third person
12 designated by the court, if the third person will not allow access to
13 a parent who has a pattern of domestic violence except as ordered
14 by the court.

15 (c) Except as provided in subsection (b), the court may order
16 only supervised child visitation, if any, with a parent who has
17 demonstrated a pattern of domestic violence, conditioned upon the
18 parent's participation in a domestic violence treatment program.
19 However, the court may order unsupervised child visitation with
20 the parent if:

21 (1) the parent:

22 (A) has successfully completed a domestic violence
23 treatment program;

24 (B) is not abusing alcohol or drugs; and

25 (C) poses no danger to the child; and

26 (2) the unsupervised visitation is in the child's best interests.

C
o
p
y

